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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 3763

12 **CARMEN L. HARTMAN**
13 **also known as CARMEN LINDA CALVIN**
14 **also known as LINDA CALVIN**
15 **29729 Nandina Drive**
Escondido, CA 92026

A C C U S A T I O N

16 **Pharmacy Technician Registration**
No. TCH 27285

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about October 2, 1998, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 27285 to Carmen L. Hartman, also known as Carmen Linda Calvin,
25 also known as Linda Calvin (Respondent). The Pharmacy Technician Registration was in
26 full force and effect at all times relevant to the charges brought herein and will expire on
27 September 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

5. Section 4202, subdivision (d), provides that the Board may suspend or revoke any pharmacy technician registration issued on any ground specified in Section 4301.

6. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

1 (a) Considering the denial of a license by the board under Section 480; or

2 (b) Considering suspension or revocation of a license under Section 490.

3 Each board shall take into account all competent evidence of rehabilitation
4 furnished by the applicant or licensee.

5 8. Section 490 of the Code provides that a board may suspend or revoke a license on the
6 ground that the licensee has been convicted of a crime substantially related to the qualifications,
7 functions, or duties of the business or profession for which the license was issued.

8 9. Section 493 of the Code states:

9 Notwithstanding any other provision of law, in a proceeding conducted by a
10 board within the department pursuant to law to deny an application for a license
11 or to suspend or revoke a license or otherwise take disciplinary action against a
12 person who holds a license, upon the ground that the applicant or the licensee
13 has been convicted of a crime substantially related to the qualifications,
14 functions, and duties of the licensee in question, the record of conviction of the
15 crime shall be conclusive evidence of the fact that the conviction occurred, but
16 only of that fact, and the board may inquire into the circumstances surrounding
17 the commission of the crime in order to fix the degree of discipline or to
18 determine if the conviction is substantially related to the qualifications,
19 functions, and duties of the licensee in question.

16 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
17 'registration.'

18 10. Section 4022 of the Code states

19 Dangerous drug" or "dangerous device" means any drug or device unsafe
20 for self-use in humans or animals, and includes the following:

21 (a) Any drug that bears the legend: "Caution: federal law prohibits
22 dispensing without prescription," "Rx only," or words of similar import.

23 (b) Any device that bears the statement: "Caution: federal law restricts this
24 device to sale by or on the order of a _____," "Rx only," or words of
25 similar import, the blank to be filled in with the designation of the practitioner
26 licensed to use or order use of the device.

26 (c) Any other drug or device that by federal or state law can be lawfully
27 dispensed only on prescription or furnished pursuant to Section 4006.

1 11. Section 4059, subdivision (a) of the Code states:

2 (a) A person may not furnish any dangerous drug, except upon the
3 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A
4 person may not furnish any dangerous device, except upon the prescription of a
physician, dentist, podiatrist, optometrist, or veterinarian.

5 12. Section 4060 of the Code states:

6 No person shall possess any controlled substance, except that furnished to a
7 person upon the prescription of a physician, dentist, podiatrist, optometrist,
8 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
9 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
10 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician
11 assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section
12 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of,
13 or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of
14 Section 4052. This section shall not apply to the possession of any controlled
substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician,
podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
nurse-midwife, nurse practitioner, or physician assistant, when in stock in
containers correctly labeled with the name and address of the supplier or
producer.

15 Nothing in this section authorizes a certified nurse-midwife, a nurse
16 practitioner, a physician assistant, or a naturopathic doctor, to order his or her
own stock of dangerous drugs and devices.

17 13. Section 4301 of the Code states:

18 The board shall take action against any holder of a license who is guilty of
19 unprofessional conduct or whose license has been procured by fraud or
20 misrepresentation or issued by mistake. Unprofessional conduct shall include,
but is not limited to, any of the following:

21 . . .

22 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
23 deceit, or corruption, whether the act is committed in the course of relations as
24 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

25 (g) Knowingly making or signing any certificate or other document that
falsely represents the existence or nonexistence of a state of facts.

26 (h) The administering to oneself, of any controlled substance, or the use of
27 any dangerous drug or of alcoholic beverages to the extent or in a manner as to
28 be dangerous or injurious to oneself, to a person holding a license under this
chapter, or to any other person or to the public, or to the extent that the use

1 impairs the ability of the person to conduct with safety to the public the practice
2 authorized by the license.

3 ...

4 (j) The violation of any of the statutes of this state or of the United States
5 regulating controlled substances.

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7 (l) The conviction of a crime substantially related to the qualifications,
8 functions, and duties of a licensee under this chapter. The record of conviction
9 of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
10 United States Code regulating controlled substances or of a violation of the
11 statutes of this state regulating controlled substances or dangerous drugs shall
12 be conclusive evidence of unprofessional conduct. In all other cases, the record
13 of conviction shall be conclusive evidence only of the fact that the conviction
14 occurred. The board may inquire into the circumstances surrounding the
15 commission of the crime, in order to fix the degree of discipline or, in the case
16 of a conviction not involving controlled substances or dangerous drugs, to
17 determine if the conviction is of an offense substantially related to the
18 qualifications, functions, and duties of a licensee under this chapter. A plea or
19 verdict of guilty or a conviction following a plea of nolo contendere is deemed
20 to be a conviction within the meaning of this provision. The board may take
21 action when the time for appeal has elapsed, or the judgment of conviction has
22 been affirmed on appeal or when an order granting probation is made
23 suspending the imposition of sentence, irrespective of a subsequent order under
24 Section 1203.4 of the Penal Code allowing the person to withdraw his or her
25 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
26 guilty, or dismissing the accusation, information, or indictment.

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28 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
abetting the violation of or conspiring to violate any provision or term of this
chapter or of the applicable federal and state laws and regulations governing
pharmacy, including regulations established by the board or by any other state
or federal regulatory agency.

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14. Section 4324 of the Code states:

(a) Every person who signs the name of another, or of a fictitious person, or
falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as
genuine, any prescription for any drugs is guilty of forgery and upon conviction
thereof shall be punished by imprisonment in the state prison, or by
imprisonment in the county jail for not more than one year.

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(b) Every person who has in his or her possession any drugs secured by a forged prescription shall be punished by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.

15. Health and Safety Code section 11170 states:

No person shall prescribe, or furnish a controlled substance for himself.

16. Health and Safety Code section 11173, subdivision (a) states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of a prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; (2) or by the concealment of a material fact.

17. Health and Safety Code section 11350, subdivision (a), states:

(a) Except as otherwise provided in this division, every person who possesses (a) any controlled substance specified in subdivision (b) or (c), or paragraph (f) of Section 11054, specified in paragraph (14), (15), or (20), of subdivision (d) of Section 11054, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

REGULATIONS

18. California Code of Regulations, title 16, section 1769, subdivision b, states:

When considering the suspension or revocation of a facility or personal license on the ground that the licensee or the registrant has been convicted of a crime, the board in evaluating the rehabilitation of such person and her present eligibility for a license will consider the following:

- (1) The nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) Time that has elapsed since the commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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1 19. California Code of Regulations, title 16, section 1770, states:

2 For the purpose of denial, suspension, or revocation of a personal or
3 facility license pursuant to Division 1.5 (commencing with Section 475) of the
4 Business and Professions Code, a crime or act shall be considered substantially
5 related to the qualifications, functions or duties of a licensee or registrant if to a
6 substantial degree it evidences present or potential unfitness of a licensee or
7 registrant to perform the functions authorized by his license or registration in a
8 manner consistent with the public health, safety, or welfare.

9 COST RECOVERY

10 20. Section 125.3 of the Code states, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 CONTROLLED SUBSTANCES

15 21. Propoxyphene naphsylate and acetaminophen, also known by the brand name
16 Darvocet, is a schedule IV controlled substance as designated by Health and Safety Code section
17 11057(c), and is a dangerous drug pursuant to Business and Professions Code section 4022.

18 22. Hydrocodone/APAP is a Schedule II controlled substance as designated by Health
19 and Safety Code section 11055(b)(1)(J), and is a dangerous drug pursuant to Business and
20 Professions Code section 4022. Hydrocodone is a narcotic pain reliever.

21 FIRST CAUSE FOR DISCIPLINE

22 (April 7, 2009, Conviction for Possession of Controlled Substance on March 2, 2009)

23 23. Respondent is subject to disciplinary action under Code sections 490 and 4301,
24 subdivision (I), on the grounds that she was convicted of a crime substantially related to her
25 qualifications, functions and duties as a pharmacy technician. The circumstances are as follows:
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1 a. On April 7, 2009, in a criminal case entitled *The People of the State of California v.*
2 *Carmen Linda Calvin*, Superior Court of California, County of San Diego, North County
3 Division, case number CN258727, Respondent was convicted by her plea of guilty to violating
4 Business and Professions Code section 4060 (unlawful possession of controlled substance-
5 without a prescription), a misdemeanor.

6 b. The circumstances that led to the conviction are that on or about March 2, 2009, the
7 Vons Pharmacy in Escondido received a telephone voice message, allegedly from a doctor's
8 employee, that ordered a prescription of the controlled substance Hydrocodone/APAP for
9 Respondent. The pharmacist in charge (PIC) became suspicious of the prescription's validity
10 because it failed to provide the necessary quantity information. The PIC checked Respondent's
11 records at the pharmacy and discovered that the pharmacy had recently filled three prescriptions
12 for Hydrocodone/APAP for Respondent on February 2, February 16, and February 24, 2009, as
13 follows: the first Hydrocodone/APAP prescription for Respondent was originally called in by
14 "Angela" from Dr. K.'s office on February 6, 2009; and, two additional telephonic prescriptions
15 of Hydrocodone/APAP for Respondent were received, allegedly from "Amy" at Dr. K. office, on
16 February 16 and February 24, 2009. The PIC called the prescribing doctor's office and was
17 informed that none of the doctor's employees had telephoned in any prescriptions for Respondent
18 other than the first prescription on February 2, 2009; and, no one named "Amy" works for Dr. K.
19 The pharmacist notified the Escondido Police Department that he had received fraudulent
20 telephonic prescriptions and arranged for police officers to be present when Respondent came to
21 pick up the most recent prescription on March 2, 2009. After Respondent attempted to pick up
22 the fraudulent prescription, she was arrested and taken into custody. The arresting officers
23 searched Respondent's vehicle and seized a pharmacy quick reference guide which included
24 instructions on how to fill a prescription, a credit card receipt for purchase of a prescription from
25 the same Vons pharmacy on February 24, 2009, and an unlabeled prescription bottle that
26 contained eight (8) Darvocet pills. The arresting officers also impounded from the pharmacy
27 documentation containing the transactions signatures used to pick up prescriptions for
28

Respondent on February 6, 16, and 24, 2009, and documentation for the telephonic prescriptions for Respondent made on or about February 2, 16, and 24, and March 2, 2009.

c. On April 7, 2009, Respondent was sentenced to three (3) years of summary probation, to pay fines, and ordered to stay away from all Vons stores.

SECOND CAUSE FOR DISCIPLINE

(Dishonest or Fraudulent Acts: 2003 - 2009)

24. Respondent is subject to disciplinary action under Code section 4301, subdivisions (f), (g) and (o), in that she engaged in acts involving moral turpitude, dishonesty, fraud, deceit or corruption by fraudulently communicating directly or indirectly with a pharmacy while impersonating a doctor's employee and ordering prescriptions of controlled substances and/or dangerous drugs for herself, during the time period of 2003 through March 2009, as follows:

25. On or about February 16, February 24, and March 2, 2009, Respondent directly or indirectly impersonated an employee from Dr. K.'s office and telephonically prescribed for herself the controlled substance, Hydrocodone and acetaminophen, also known by the brand name, Norco. Respondent then directly or indirectly picked up, or attempted to pick up, the fraudulently prescribed controlled substance, as described above in paragraph 23 which is incorporated herein by reference.

26. On November 17, 2003, Respondent was terminated from her employment as a Pharmacy Technician at Costco Pharmacy due to her admitted diversion of controlled substances and/or dangerous drugs from her employer. Respondent admitted that on several occasions in or about 2003, while employed as a Pharmacy Technician at Costco Pharmacy, Respondent falsified or fabricated prescriptions for herself and for her husband by altering the refill quantities on the prescriptions that were maintained at her employer pharmacy. Respondent also admitted that she picked up the fraudulently prescribed drugs and self-administered them.

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1 **THIRD CAUSE FOR DISCIPLINE**

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3 **(Unlawful Possession of Controlled Substances: 2003 - 2009)**

4 27. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
5 in that she unlawfully self-prescribed and possessed controlled substances and/or dangerous drugs
6 without a valid prescription, in violation of Business and Professions Code sections 4060 and
7 4059 (a), several times during the time period of 2003 through March 2, 2009, as described above
8 in paragraphs 23 through 26, above, which are incorporated by reference.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unlawful Self Furnishing and Administering Controlled Substances: 2003 - 2009)**

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12 28. Respondent is subject to disciplinary action under Code section 4301, subdivisions
13 (h), (j) and (o), in that on several occasions between the dates of 2003 and March 2, 2009, she
14 unlawfully and fraudulently self-prescribed and then self-administered controlled substances
15 and/or dangerous drugs without a valid prescription, in violation of Business and Professions
16 Code sections 4059, 4060, and 4324, and in violation of Health and Safety Code sections 11170,
17 11173 (a), and 11350 (a), as described above in paragraphs 23 through 26, which are incorporated
18 herein by reference.

19 **PRAYER**

20 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Board of Pharmacy issue a decision:

- 22 1. Revoking or suspending Original Pharmacy Technician Registration Number TCH
23 27285, issued to Carmen L. Hartman
- 24 2. Ordering Carmen L. Hartman to pay the Board of Pharmacy the reasonable costs of
25 the investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3;

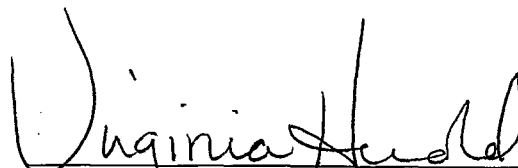
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3. Taking such other and further action as deemed necessary and proper.

DATED:

4/5/11



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2010701413